

REMARKS

A. Introduction

Claims 1-8, 10-20 and 30-46 were pending in the application at the time of the Office Action. Claims 1-8, 10-20 and 30-46 were rejected as being anticipated by and/or obvious over cited art. By this response applicant has cancelled claims 18, 38, 42, and 43; amended claims 1, 12, 14, 19, 30, 41, 44, and 46; and added new claims 47-49. As such, claims 1-8, 10-17, 19, 20, 30-37, 39-41, and 41-49 are presented for the Examiner's consideration in light of the following remarks.

B. Proposed Amendments

Applicant has herein amended the specification and drawings to remedy various formal matters.

Applicant has herein amended claims 1, 12, 14, 19, 30, 41, 44, and 46 to further clarify, more clearly define, and/or broaden the claimed inventions to expedite receiving a notice of allowance. For example, claim 1 has been amended to further clarify the structural relationship between the template, the brace, and the guide sleeve, and formerly independent claims 12, 30, and 41 have been amended to now depend from amended independent claim 1.

Applicant has also added new claims 47-49, which applicant believes are distinguished over the cited references as discussed below.

The amendments to the claims are supported in the application at least by Figures 2 and 3 and the corresponding discussion in the specification. In view of the foregoing discussion, applicant submits that the amendments to the specification, drawings, and claims do not introduce new matter and entry thereof is respectfully requested.

C. Examiner Interview

Applicant would like to thank the Examiner for the courtesy of the telephone interview conducted on December 31, 2008. A proposed amendment to claim 1 was presented and contrasted with the cited references, especially U.S. Patent No. 5,154,720 to Trott et al. ("*Trott*") and PCT Publication No. WO 01/66022 to Pinczewski ("*Pinczewski*"). The Examiner agreed that the amended claim would overcome the prior art rejections set forth in the outstanding Office Action as generally discussed below and would likely be allowable. However, the Examiner stated that a further search would need to be performed. The proposed amended claim is herein presented as new claim 48. Applicant notes that amended claim 1 presented herein also includes the limitations of the amendment presented in the Examiner Interview, but has been modified to clarify that instead of the longitudinal axis of the template passing through the first and second locations of the template, the longitudinal axis of the template "intersects the central longitudinal axis of the tubular guide sleeve when the template is in the posterior position and when the template is in the anterior position." Applicant believes that with this amendment, claim 1 is also distinguished over the cited references and should be allowable for substantially the same reasons discussed in the Examiner Interview and generally discussed below.

As noted above, former independent claims 12, 30, and 41 have been amended herein to now depend from amended independent claim 1. As such, claims 1, 48, and 49 are the only pending independent claims.

D. Rejection based on 35 USC § 102

Pages 2 and 3 of the Office Action reject claims 1-2, 6, 10, and 44-45 under 35 USC § 102(b) as being anticipated by *Trott*. As agreed to by the examiner during the telephone

conference, applicant respectfully submits that because *Trott* only teaches a template 14 that moves in an arcuate motion with respect to a guide sleeve 16, *Trott* does not disclose or suggest a template and a tubular guide sleeve in which “the central longitudinal axis of the template passes through both the first and second locations of the template such that the angle formed between the central longitudinal axis of the template and the central longitudinal axis of the tubular guide sleeve is the same when the template is in the posterior position and when the template is in the anterior position,” as recited in new claim 48.

Furthermore, for substantially the same reasons, Applicant submits that *Trott* does not disclose or suggest a template and a tubular guide sleeve in which “the longitudinal axis of the template intersects the central longitudinal axis of the tubular guide sleeve when the template is in the posterior position and when the template is in the anterior position, such that the angle formed between the longitudinal axis of the template and the central longitudinal axis of the tubular guide sleeve is the same when the template is in the posterior position and when the template is in the anterior position,” as recited in amended claim 1. Accordingly, Applicant respectfully requests that the anticipation rejection with respect to claim 1 be withdrawn.

Claims 2, 6, 10, and 44-45 depend from claim 1 and thus incorporate the limitations thereof. As such, applicant submits that claims 1-2, 6, 10, and 44-45 are distinguished over the cited art for at least the same reasons as discussed above with regard to claim 1. Accordingly, Applicant respectfully requests that the anticipation rejection with respect to claims 2, 6, 10, and 44-45 also be withdrawn.

E. Rejections based on 35 USC § 103

Pages 3-5 of the Office Action reject claims 3-5, 8, 11-20, 30-42 under 35 USC § 103(a) as being obvious over *Trott* in view of other references: claims 3-5, 8, 12-19, 30-39, and 41-42 were rejected in view of *Pinczewski*; claim 11 was rejected in view of U.S. Patent No. 4,920,958 to Walt et al. ("*Walt*"); claims 20 and 40 were rejected in view of *Pinczewski* and *Walt*. In view of the cancellation of claims 18, 38, and 42, the rejection of those claims has been rendered moot. Regarding the rest of the rejected claims, claims 3-5, 8, 11-19, 20, 30-37, 39-41 depend from claim 1 and thus incorporate the limitations thereof.

As agreed to by the examiner during the telephone conference, neither *Pinczewski* nor *Walt* cure the deficiencies of *Trott*, discussed above with regard to claims 1 and 48. As such, applicant submits that claims 3-5, 8, 11-19, 20, 30-37, 39-41 are distinguished over the cited art for at least the same reasons as discussed above with regard to claims 1 and 48. Accordingly, Applicant respectfully requests that the obviousness rejection with respect to claims 3-5, 8, 11-19, 20, 30-37, 39-41 be withdrawn.

No other objections or rejections are set forth in the Office Action.

F. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 1-8, 10-17, 19, 20, 30-37, 39-41, and 41-49 as amended and presented herein.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 20th day of January, 2009.

Respectfully submitted,

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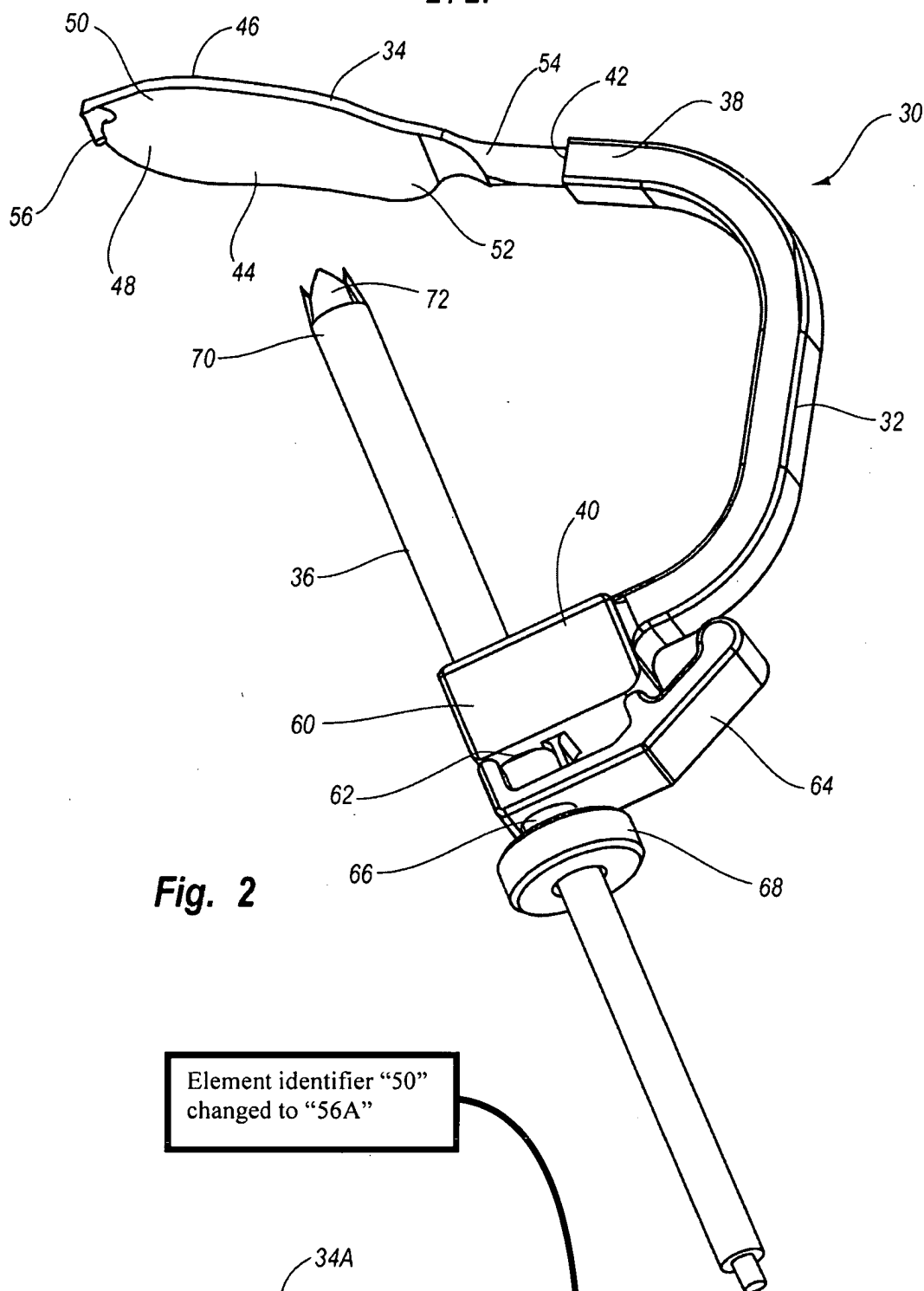


Fig. 2

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changed to "56A"

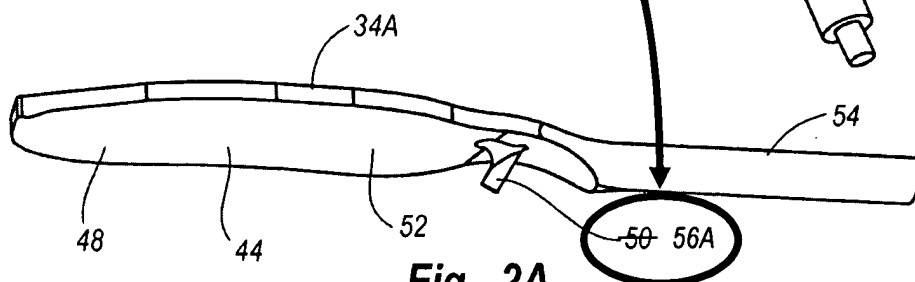


Fig. 2A